

SERVICE DATE – LATE RELEASE MAY 30, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42084

CF INDUSTRIES INC. v. KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Decided: May 30, 2006

In a decision served on August 12, 2004, in this rate complaint case, the Board directed Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, Kaneb) to stop charging rates to CF Industries, Inc. (CFI) for the pipeline transportation of anhydrous ammonia in excess of those prescribed in CF Industries Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served May 9, 2000), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001), and to pay reparations.¹ The Board also noted that there could be changed circumstances associated with Kaneb's purchase of the pipeline from Koch that might warrant vacating the prescription, and asked for additional evidence on that issue. The evidence was timely submitted, an oral argument was held, and post-argument briefs were filed in June 2005.

The Board subsequently learned that Kaneb was acquired by Valero L.P. (Valero) by stock purchase in July 2005. In a decision served on November 3, 2005, the agency requested more information about that transaction because of its possible implications for the instant proceeding, and ordered Kaneb to submit a supplemental pleading. The Board allowed CFI to reply.

Kaneb submitted a supplemental brief on November 22, 2005, responding in part to the Board's request, but also asked for additional time to prepare a more complete response because a final accounting had not yet been completed. The Board granted Kaneb's extension request in a decision served on December 2, 2005, and, pursuant to Kaneb's subsequent request, further extended the due date for the response to March 31, 2006, and the reply due date to April 14, 2006.

¹ On October 13, 2004, the Board granted a petition filed by Dyno Nobel Inc. (Dyno) to intervene in this proceeding. In a decision served on April 10, 2006, the Board granted Dyno's motion to withdraw from the proceeding.

Kaneb timely filed its supplemental brief, providing additional information about Valero's acquisition, and stating it had tentatively determined that, with the information received to date from its financial consultants, the pipeline and line fill would be valued on Valero's books at \$175 million. Although this number has not been finalized, Kaneb believes it represents an accurate value of the pertinent assets at the time of Valero's purchase.

In its reply, CFI asks the Board to maintain the prescription. CFI argues, among other things, that Kaneb's new purchase price figure demonstrates the rate spiral concern expressed in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944). It claims that any harm caused by poor decisionmaking should be borne by the carrier rather than passed on to the shipper.

CFI's reply also contains a conditional motion to conduct discovery. CFI asks that, if the Board does not summarily find that the prescription should be maintained, CFI be allowed to conduct discovery about the purchase price. In particular, CFI argues that it needs to examine why Valero would pay \$175 million for a pipeline with prescribed rates, falling volumes, and faltering suppliers, when the pipeline allegedly was losing money based on Kaneb's \$140 million purchase price a few years earlier. Further, CFI believes that Valero overvalued the line fill and wants to explore this issue. CFI also wants to examine how Valero's personnel made the accounting and investment determinations concerning the purchase price. Finally, CFI notes that, should the Board deem the Valero purchase price important to a decision concerning the prescription, the agency should not proceed without the final purchase price.

Kaneb filed a reply on May 3, 2006. Kaneb opposes CFI's conditional motion to conduct discovery. It points to the already large record and argues that no more evidence is necessary to decide the case. Kaneb also argues that CFI's motion is merely a ploy to prolong a prescription that provides CFI with favorable rates. Lastly, Kaneb believes CFI's questioning of its figures is unjustified.

In the interests of a complete record, CFI will be allowed to conduct discovery. If CFI wishes to file a supplemental pleading based on its discovery, that pleading will be due 45 days from the date the carrier provides the final accounting to the Board and CFI. If Kaneb wishes to file a reply, the reply will be due 15 days from the date that CFI files a supplemental pleading.

It is ordered:

1. CFI's conditional motion to conduct discovery is granted.
2. Kaneb must submit its final accounting to the Board and CFI.
3. CFI's supplemental pleading is due 45 days after the date that Kaneb submits its final accounting to the Board and CFI.

4. Kaneb's reply is due 15 days after the date that CFI files its supplemental pleading.

5. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary